

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING #95-36**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Sales and use taxation of food purchased for use in food service contracts with for-profit hospitals.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

[THE TAXPAYER] proposes to operate and manage a food services program for private, for-profit hospitals (Hospital) in Tennessee. The Taxpayer proposes to contract with these hospitals using either of two written contracts. These contracts are attached to and incorporated by reference into this ruling, and will be referred to, as they are in the caption on the contracts, as “Agreement One” and “Agreement Two.”

Under both contracts, the Hospital is responsible for furnishing a kitchen facility, equipment, and repairs to the equipment. Hourly personnel are employees of the Hospital. The Taxpayer is responsible for furnishing management personnel. Both food services contracts provide for feeding two populations: hospital patients, who are furnished meals in conjunction with their hospitalization, and the public, which pays for the meals in a cafeteria operated as a part of the food services program.

The two contracts are similar in all respects except as follows.

Agreement One provides that the Taxpayer is to purchase food “as agent for, and in behalf of the Hospital.”

Agreement Two provides that the Taxpayer purchases food “for sale to the Hospital.” The food is sold by the Taxpayer to the Hospital prior to its preparation. Agreement Two

provides that the Taxpayer is not acting as an agent of the Hospital in purchasing food. The Taxpayer will purchase the food tax exempt for resale. The Hospital's payment to the Taxpayer for food used in patient feeding is based on a per patient day rate.

In both contracts, [ITEM A] provides that the cash receipts from the cafeteria belong to the Taxpayer and [ITEM B] makes the Taxpayer liable for collecting and remitting sales tax on cafeteria sales.

Under each of the agreements:

1. What is the application of sales or use tax to food used in patient feeding?
2. What is the application of sales or use tax to food sold through the cafeteria?

RULING

Agreement One

1. Sales or use tax is due on the price paid by the Hospital (with the Taxpayer acting as purchasing agent) to the food vendors for the food used in patient feeding.
2. The cafeteria sales are taxable, with the sales price as the proper tax base. No sales or use tax is due upon the purchase of food to be sold in the cafeteria.

Agreement Two

1. Sales tax is due on the price paid by the Hospital to the Taxpayer for the food used in patient feeding.
2. The cafeteria sales are taxable, with the sales price as the proper tax base. No sales or use tax is due upon the purchase of food to be sold in the cafeteria.

ANALYSIS

Agreement One

1. Hospitals are engaged in the business of rendering services, and are the consumers or users of all tangible personal property or taxable services purchased for use or consumption in connection with their operations as a hospital. Tenn. Comp. R. & Regs. 1320-5-1-.26(1). The Hospital is clearly liable for tax on its purchase of food for feeding its patients. If the food is acquired tax-free by the Hospital, the Hospital, as user and consumer, would be responsible for self-reporting sales or use tax on the cost of the portion of the food used in providing patient meals. Tenn. Comp. R. & Regs. 1320-5-1-.95 requires that accurate records be kept to determine what portion of the food is so used.

2. Unlike food used in feeding patients, food sold in the cafeteria is sold by the hospital rather than used as part of the hospital's operations. Sales tax should be collected and remitted on the sales price of the meals sold in the cafeteria. Tenn. Comp. R. & Regs. 1320-5-1-.34(2). It is noted that ¶2.9 of the contract provides that the cash receipts from the cafeteria belong to the Taxpayer and ¶5.6 makes the Taxpayer liable for collecting and remitting sales tax on cafeteria sales. Since the food is owned by the Hospital up until it is sold to the cafeteria consumer, the Hospital is the seller and therefore the legal incidence of the sales tax will fall upon the Hospital. While the cash receipts have been transferred to the Taxpayer and the responsibility for remitting the tax has been delegated under the contract, the Hospital's liability to the state for the tax cannot be changed by contract. The Hospital will be held liable to remit the tax should the Taxpayer fail to do so.

Agreement Two

1. As stated in the analysis relative to Agreement One, sales or use tax is due on food purchased by the Hospital for use in patient meals. The proper tax base is the purchase price paid by the Hospital to the Taxpayer, that is, the rate paid per patient day. Here, the Taxpayer should collect and remit the sales tax on the billings to the Hospital. Since all the food purchased from the Taxpayer on these billings is known to be for the purpose of patient feeding, the Hospital cannot issue a valid resale certificate. The vendor must collect the tax in accordance with Tenn. Comp. R. & Regs. 1320-5-1-.26(1).

2. Food sales to the public are taxable, for the same reasons as stated in the analysis relative to Agreement One. Title to the food under Agreement Two vests in the Hospital when delivered; therefore, as explained in the analysis for Agreement One, the legal incidence for the tax falls upon the Hospital, not the Taxpayer.

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APPROVED: Ruth E. Johnson, Commissioner

DATE: 11-2-95